

NO. _____

**RANDALL N. FERRELL and
BEVERLY A. FERRELL,
PLAINTIFFS**

V.

**AVT TITLE SERVICES, LLC, as
TRUSTEE FOR OPTION ONE
MORTGAGE CORP. AND WELLS
FARGO BANK, N.A. and LAYMAN
VENTURES, LLC,
DEFENDANTS**

**§ IN THE DISTRICT COURT
§
§ 336th JUDICIAL DISTRICT
§
§ OF
§
§ FANNIN COUNTY, TEXAS**

**PLAINTIFFS' ORIGINAL PETITION
TO VACATE SALE UNDER DEED OF TRUST**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES RANDALL N. FERRELL and BEVERLY A. FERRELL, Plaintiffs, complaining of and about DEFENDANTS AVT TITLE SERVICES, LLC, as Trustee for WELLS FARGO BANK, N.A. and for OPTION ONE MORTGAGE CORPORATION and LAYMAN VENTURES, LLC, and for cause of action would respectfully show unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. PLAINTIFFS intend that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. PLAINTIFFS are individuals residing at 109 Tiger Lane, Trenton, Texas 75490; the last three numbers of RANDALL N. FERRELL's driver's license number are 715, and the last three numbers of RANDALL N. FERRELL's social security number are 271. The last three

numbers of BEVERLY A. FERRELL's driver's license number are 123, and the last three numbers of BEVERLY A. FERRELL's social security number are 471.

3. DEFENDANTS are as follows:

- AVT TITLE SERVICES, LLC., is a Texas limited-liability company, as Trustee for OPTION ONE MORTGAGE CORPORATION and for WELLS FARGO BANK, N.A. with its business at 5177 Richmond Avenue, Suite 1230, Houston, Texas 77056, and its agent for service at that address is RANDY DANIEL or any officer of the company;

- LAYMAN VENTURES, LLC, a Texas limited-liability company, whose business address is 740 Scott Road, Bells, Texas 75414, and its agents for service at that address are CAROL LAYMAN or MONTE LAYMAN.

JURISDICTION AND VENUE

4. The court has jurisdiction over this action, and venue in Fannin County, Texas is proper in this cause because this action involves real property located in Fannin County.

FACTS

5. This is an action to vacate a void Trustee's Sale due to wrongful foreclosure on real property described in a Deed of Trust dated May 3, 2006, recorded in Volume 1230, Page 90, of the Real Property Records of Fannin County, Texas. A true and correct copy of the Deed of Trust is attached as EXHIBIT A and is incorporated herein by reference. Defendants failed to comply with the provisions of the Texas Property Code in regard to foreclosures under a Deed of Trust as hereinafter set forth.

6. Plaintiffs are the rightful owners, and are entitled to possession of the Property by

virtue of a deed to them dated May 3, 2006, filed of Record in Fannin County Deed Records, Vol. 1230, Page 97. On May 3, 2006, Plaintiffs executed a purchase money Real Estate Note secured by the above-described Deed of Trust to TEXAS CAPITAL BANK, N.A. The Note and Deed of Trust were subsequently transferred and assigned numerous times and, finally, to AVT, Trustee for WELLS FARGO BANK, N.A. and OPTION ONE MORTGAGE CORPORATION. Although the property is encumbered by the Deed of Trust lien in favor of TEXAS CAPITAL BANK, N.A., and its assignees, Plaintiffs have at all times made regular and timely payments on the Note and are not delinquent as to any payment or in default of any obligations or covenants owed to Defendants under the provisions of the Deed of Trust. Nevertheless, on or about March 1, 2022, Defendant AVT TITLE SERVICES, LLC, as Substitute Trustee, acting on instructions from WELLS FARGO BANK, N.A., Trustee for OPTION ONE MORTGAGE CORPORATION, and without giving the notices to Plaintiffs required by the Texas Property Code, Section 51.002, wrongfully foreclosed on Plaintiffs' home at a Trustee's Sale to Defendant, LAYMAN VENTURES, LLC. Additionally, the statutorily-required Notice of the Trustee's Sale was not posted at the place designated by the County Commissioners Court of Fannin County preceding the date of the sale and WELLS FARGO BANK, N.A., being the holder of the debt, did not serve written notice of the proposed sale on Plaintiffs by certified mail. Further, Plaintiffs were not given notice of any intent to accelerate the note and were not given an opportunity to cure any alleged default. Plaintiffs first received notice of the foreclosure sale when a representative of Defendant LAYMAN VENTURES, LLC delivered them a notice that it had purchased Plaintiffs' home at a Trustee's auction and in which it inquired about Plaintiffs' plan to vacate their home.

7. By this wrongful foreclosure sale and LAYMAN's notice to Plaintiffs, Plaintiffs

have been effectively dispossessed of the property, and the Substitute Trustee's Deed to LAYMAN VENTURES, LLC dated March 7, 2022, of record in Document Number 2022002301 in the Official Records of Fannin County, Texas, should be set aside, and the referenced foreclosure sale vacated as invalid, unenforceable, void, and without right against Plaintiffs. A true and correct copy of the Substitute Trustee's Deed is attached hereto, marked as EXHIBIT B and incorporated herein by reference.

8. Defendant LAYMAN VENTURES, LLC. has demanded possession of Plaintiffs' home and threatened the filing of an eviction suit against them if they do not vacate. Unless the Trustee's Deed is removed and the foreclosure set aside as void, Plaintiffs will lose possession of their home, without compensation, and without having a fair opportunity to sell or mortgage the property at some future date to obtain full benefit of its appreciated value.

ATTORNEY'S FEES

9. Plaintiffs sent Defendants a written notice of this suit by certified mail at least ten days prior to the filing of this action, including their request for Attorney's fees, and are entitled to recover attorney's fees and costs should Plaintiffs prevail in this action.

PRAYER

WHEREFORE, PREMISES CONSIDERED, PLAINTIFFS, RANDALL N. FERRELL and BEVERLY A. FERRELL, respectfully request that DEFENDANTS be cited to appear and answer; that the Court, after hearing, grant Plaintiffs a judgment against Defendants vacating the wrongful foreclosure sale, setting aside the Substitute Trustee's Deed to Defendant, LAYMAN VENTURES, LLC, removing the cloud on Plaintiffs' title, and awarding to Plaintiffs

attorney fees and costs, and any further relief at law or in equity to which Plaintiffs are entitled.

Respectfully submitted,

By: 

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